

**Remarks:**

In the Office Action, the Examiner had rejected claims 41-48, and 51 under 35 USC 112, second paragraph, as being indefinite for use of the term “high priority”. The Examiner had also rejected claim 57 under 35 USC 112, second paragraph, as being indefinite for use of the term “minimal actions by the user”. These terms are no longer used in the claims of the present application.

In the Office Action, the Examiner had rejected claims 41-43, 48, 49-52, and 56 under 35 USC 102(b) as being anticipated by Apple iTunes as described by the cited prior art. The applicant respectfully traverses the rejection, for at least the reasons discussed below.

In the Office Action, the Examiner had rejected claims 44-46 and 53-54 under 35 USC 103(a) as being unpatentable over by Apple iTunes as described by the cited prior art and further in view of Official Notice. The applicant respectfully traverses the rejection, for at least the reasons discussed below.

In the Office Action, the Examiner had rejected claims 47, 55, and 57-60 under 35 USC 103(a). The applicant respectfully traverses the rejection. Applicant believes these claims are for a patentably different invention and the applicant currently intends to pursue the different invention of claims 57-60 in a continuing application. Therefore, reasons for this traverse are not included in this filing.

An Interview was held from 1 to 2pm on Wednesday, Oct 10, 2007 in the USPTO Knox building. The applicant had faxed a PTOL 413A and new draft claims 61-76 to Examiner Greene prior to the meeting. Meeting participants were the applicant James W. Wieder and examiners Daniel L. Greene and Ella Colbert. Much of the discussion was about new draft claim 61 and the prior art. Applicant also discussed pursuing the invention described by old claims 57-60 in a continuing application. The Examiners made suggests for amendments to the claims. An agreement with respect to the claims was not reached.

In this amendment, the applicant has requested changes to the Specification to correct grammar and typographical errors. The applicant has requested changes to the Abstract to more closely reflect the invention that is claimed in this application.

In this amendment, the applicant has cancelled all previously pending claims and filed all new claims to more clearly define the invention. The applicant has also increased the total number of claims and included additional fees for these claims.

The applicant believes the prior art cited in the Office Action is significantly different from the applicant's claimed invention. These differences are discussed in the applicant's specification (under the prior art discussion and in the invention disclosure) and are discussed further below.

In the Apple iTunes (and similar prior art), the user may manually build playlists. First, the user must enter a playlist definition mode and name the playlist. Then, the user must manually designate each song, album or other playlist that should be included in the user's playlist. Whenever the user's tastes change, the user must manually make each desired change to their playlist. When the user wants to play that playlist at a later time, the user must "find" that playlist by name.

Other prior art systems allow the user to define a "profile" of the "types" of songs they prefer. First, the user must enter a definition mode. Then, the user may designate a type(s) or sub-type(s) of music; genre(s); sub-genre(s); or artist(s). The user must have pre-knowledge of what these categories/classifications mean (e.g., "Blues" or the numerous sub-categories of "Blues") and the types of songs in the classifications. The classifications may be too broad for the user's tastes or the pre-defined standard classifications don't match a user's desired groupings. Because of classification limitations, the user is presented with many undesired songs and is not presented with songs that were desired.

The above types of prior-art significantly burden the user with the manual entry of additional information and require a more knowledgeable user; and are unlike the applicant's invention which captures a user's normal actions that affect the playback sequence ("applying different actions on pieces or compositions by a user") and then

exploits those captured actions for the user's benefit. Therefore, the above types of cited prior art do not perform the claimed steps of "capturing automatically said user's preference based on said step of applying different actions on said pieces or compositions" and "updating continuously said user's preference using said different actions on said pieces or compositions by said user".

In the "Rating" system of the Apple iTunes (cited in the Office Action) and other prior art, the user is required to perform an very large amount of manual data entry. Typically, the user must manually input their rating for each song. For example, in iTunes, the user must manually select from one to 5 stars to indicate their rating for each song. In other rating systems, the use may enter a number in a rating range (e.g., 1 to 100) to rate each song. The user's vision must be good enough the see the numbers/stars. The user may need to manipulate a cursor or pointing device or type to make entries or selections. The user may need to read instructions which may be in a foreign language or foreign character/symbol set. The user must understand how their actual rating system works. For example, is the rating system positive or negative orientated? What is being rated (song; album; artist)? Are more stars better/worse or is one star the best/worst? Is a higher number better/worse? Is the number one the best/worst or is the highest number the best/worse? In addition, the user may have to rate a very large number or even all of their songs in their collection before the rating system is able to provide acceptable results and/or to include songs in the rating-based playlists. In addition, the user must manually change their rating for each song whenever their taste changes. In addition, the user must group their ratings in a way that they can be sorted by a playlist selector based on their chosen ratings (e.g., create a playlist of 5 star songs). After rating many songs, the user may then discover their rating numbering/ordering does not result in suitable playlists from being created by the playlist generator. These are only some of the problems with these prior art "Rating" systems.

The above types of prior-art significantly burden the user with the manual entry of additional information and require a more knowledgeable user; and are unlike the applicant's invention which captures a user's normal actions that affect the playback sequence ("applying different actions on pieces or compositions by a user") and then exploits those captured actions for the user's benefit. Therefore, the above types of cited

prior art do not perform the claimed steps of “capturing automatically said user’s preference based on said step of applying different actions on said pieces or compositions” and “updating continuously said user’s preference using said different actions on said pieces or compositions by said user”.

The iTunes “Smart playlists” (cited in the Office Action) are very complex to setup and use (compared with the applicant’s invention). First the user must know that “Smart platlists” capabilities exist within the iTunes and must know the correct menu selections to make on a computer interface to even enter the “Smart playlists” definition mode. Then, the user must create a name for a smart playlist. Then, to define a “Smart playlist”, the user must then make numerous selections on pulldown menus and/or checkboxes, etc; of which there are probably thousands of possible combinations that may be used to define a “Smart playlist”.

To play songs using the playlist at some later time, the user must remember the created name of the “Smart playlist” and what it does and then locate the previously defined “Smart playlist” name in the iTunes system. In addition, many “normal” user actions may cause an exit from the currently active Smart playlist”: (e.g., user action to cause a specific song to play that is not in the current ‘Smart playlist”).

Even in the 2007 version of iTunes (3+ years after applicant’s filing), most of the iTunes “Smart playlist” parameters and their selection criteria (selection options) make little sense and are of limited usefulness in determining an effective user preference.

For example, the Apple iTunes “Play count” (cited in the Office Action), which is the number of times a song has been played, is not representative of a user’s current preference. A song with a high “Play count”, may have been heard so many times by the user that they are tired of hearing that song and don’t want to hear that song again or perhaps only very, very infrequently. Alternatively, a song with a high “Play count” may still remain one of the user’s current favorites and the user still wants to hear it frequently. In addition, unlike the applicant’s invention; the Apple iTunes “Play count” does not distinguish between user action to play a specific song (a strong indicator of user interest) and a non-user initiated playback of the song by a user playback device (a non-indicator by itself). In addition, unlike the applicant’s invention, a simple “Play count”

does not distinguish between the number of times a song was initiated and the number of times the song played completely or partially and the details of partial playbacks.

Similarly, the iTunes “Last played” (cited in the Office Action); which is the date/time a song was last played; is not representative of a user’s preference. The Apple iTunes “Last played” does not distinguish between when there was user action to play a specific song (a strong indicator of user interest) and a non-user initiated playback of the song by a user playback device (a non-indicator by itself). In addition, a simple “Last Played” does not distinguish between complete and partial playbacks and the details of partial playback.

The above types of prior-art significantly burden the user with the manual entry of additional information and require a more knowledgeable user; and are unlike the applicant’s invention which captures a user’s normal actions that affect the playback sequence (“applying different actions on pieces or compositions by a user”) and then exploits those captured actions for the user’s benefit. Therefore, the above types of cited prior art do not perform the claimed steps of “capturing automatically said user’s preference based on said step of applying different actions on said pieces or compositions” and “updating continuously said user’s preference using said different actions on said pieces or compositions by said user”.

In contrast with cited prior-art, the applicant’s invention may be easily operated by a 3 year old child; a 90 year old; or a computer-phobic user. With the applicant’s invention, the user operates and interacts with the user device(s) in a similar manner to what they are already familiar with. The user only needs to know whether they like the music or entertainment that they are currently experiencing. The user may take action in response to what they are hearing or take action to hear something else (“applying different actions on pieces or compositions by a user”). As an example, a user simply activates the standard skip-forward control to avoid a composition they don’t like. Or the user uses the standard “go-back” control(s) to repeat a song they recently heard. Or the user may take actions to cause a specific composition(s) to play (e.g., play the 5<sup>th</sup> song on a disk).

These types of user actions (“applying different actions on pieces or compositions by a user”) and the details and measurements associated with these user actions may be

automatically captured and saved; without requiring the user to either setup or even be aware that this is occurring. Previously, this detailed type of information about user actions was not automatically and continuously captured and was not automatically exploited for the user's benefit; as in the applicant's invention.

Using the captured user actions, the applicant's invention is able to continually and automatically adapt as a user's tastes change over time. For example, when a user eventually becomes tired of a composition, the applicant's invention automatically detects this from user actions (e.g., skipping past that composition, sooner and sooner after it has started) and may then automatically increase the amount of time before that composition is again automatically presented to the user and; depending on user actions, may automatically stop presenting that composition to the user.

Unlike the cited prior-art systems, the applicant's invention does not require the user:

- to know anything about computers; operating systems and software.
- to have a computer or to know how to operate a computer interface or a windows graphical user interface.
- to see well enough to read or to be able to read (be literate) in the displayed language of the user device.
- to be able to read information about a piece or composition that may be only available in a foreign language or expressed in another alphabet (e.g., Greek alphabet).
- to manually make a complicated series of setup selections using a set of menus on a visual interface.
- to know or remember anything about music such as artist name(s); album name(s); song title(s).
- to know or remember anything about different types of music/entertainment such as style(s); genre(s); or sub-genre(s) or other types of music or entertainment classifications.
- to go thru a complex process of defining a playlist and then once defined, having to manually make changes to the playlist again and again as the user's taste changes over time.

- to manually enter composition ratings and then manually change their ratings as their tastes change over time.

Also note that the applicant's invention was not manually performed in the past. The step of "capturing automatically said user's preference based on said step of applying different actions on said pieces or compositions" was not previously done in a manual manner. The step of "updating continuously said user's preference using said different actions on said pieces or compositions by said user" was not previously done in a manual manner. Therefore, the applicant's claimed invention is not a simple automation or computerization of previous manually performed procedures.

In summary, the applicant believes the claimed elements of the invention, when performed together as a whole entity are very different from the cited prior art. And the claimed invention is not a simple automation or computerization of previous manually performed procedures.

The applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call the Applicant.

Respectfully submitted,

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